

**RESPONSE TO FREEDOM OF
INFORMATION ACT (FOIA) / PRIVACY
ACT (PA) REQUEST**

2009-0026

2

RESPONSE
TYPE

FINAL



PARTIAL

REQUESTER

Teresa Fountain

DATE

JAN - 8 2009

PART I. -- INFORMATION RELEASED

- ☐ No additional agency records subject to the request have been located.
- ☐ Requested records are available through another public distribution program. See Comments section.
- ☒ **APPENDICES B** Agency records subject to the request that are identified in the listed appendices are already available for public inspection and copying at the NRC Public Document Room.
- ☒ **APPENDICES C** Agency records subject to the request that are identified in the listed appendices are being made available for public inspection and copying at the NRC Public Document Room.
- ☐ Enclosed is information on how you may obtain access to and the charges for copying records located at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852-2738.
- ☒ **APPENDICES C** Agency records subject to the request are enclosed.
- ☐ Records subject to the request that contain information originated by or of interest to another Federal agency have been referred to that agency (see comments section) for a disclosure determination and direct response to you.
- ☐ We are continuing to process your request.
- ☐ See Comments.

PART I.A -- FEES

AMOUNT *

\$

☐

You will be billed by NRC for the amount listed.

☐

None. Minimum fee threshold not met.

☐

You will receive a refund for the amount listed.

☒

Fees waived.

* See comments
for details**PART I.B -- INFORMATION NOT LOCATED OR WITHHELD FROM DISCLOSURE**

- ☐ No agency records subject to the request have been located.
- ☒ Certain information in the requested records is being withheld from disclosure pursuant to the exemptions described in and for the reasons stated in Part II.
- ☒ This determination may be appealed within 30 days by writing to the FOIA/PA Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Clearly state on the envelope and in the letter that it is a "FOIA/PA Appeal."

PART I.C COMMENTS (Use attached Comments continuation page if required)

The incoming request is in ADAMS at ML083080298.

SIGNATURE - FREEDOM OF INFORMATION ACT AND PRIVACY ACT OFFICER

DONNA SEALING

**RESPONSE TO FREEDOM OF INFORMATION
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PART II.A -- APPLICABLE EXEMPTIONS**APPENDICES
D & E**

Records subject to the request that are described in the enclosed Appendices are being withheld in their entirety or in part under the Exemption No.(s) of the PA and/or the FOIA as indicated below (5 U.S.C. 552a and/or 5 U.S.C. 552(b)).

- ☐ Exemption 1: The withheld information is properly classified pursuant to Executive Order 12958.
- ☐ Exemption 2: The withheld information relates solely to the internal personnel rules and procedures of NRC.
- ☐ Low 2 Internal matters of a relatively trivial nature.
- ☐ High 2 Disclosure would risk circumvention of a legal requirement.
- ☐ Exemption 3: The withheld information is specifically exempted from public disclosure by statute indicated.
- ☐ Sections 141-145 of the Atomic Energy Act, which prohibits the disclosure of Restricted Data or Formerly Restricted Data (42 U.S.C. 2161-2165).
- ☐ Section 147 of the Atomic Energy Act, which prohibits the disclosure of Unclassified Safeguards Information (42 U.S.C. 2167).
- ☐ 41 U.S.C., Section 253b, subsection (m)(1), prohibits the disclosure of contractor proposals in the possession and control of an executive agency to any person under section 552 of Title 5, U.S.C. (the FOIA), except when incorporated into the contract between the agency and the submitter of the proposal.
- ☒ Exemption 4: The withheld information is a trade secret or commercial or financial information that is being withheld for the reason(s) indicated.
- ☒ The information is considered to be confidential business (proprietary) information.
- ☐ The information is considered to be proprietary because it concerns a licensee's or applicant's physical protection or material control and accounting program for special nuclear material pursuant to 10 CFR 2.390(d)(1).
- ☐ The information was submitted by a foreign source and received in confidence pursuant to 10 CFR 2.390(d)(2).
- ☐ Disclosure will harm an identifiable private or governmental interest.
- ☒ Exemption 5: The withheld information consists of interagency or intraagency records that are not available through discovery during litigation. Applicable privileges:
- ☒ Deliberative process: Disclosure of predecisional information would tend to inhibit the open and frank exchange of ideas essential to the deliberative process. Where records are withheld in their entirety, the facts are inextricably intertwined with the predecisional information. There also are no reasonably segregable factual portions because the release of the facts would permit an indirect inquiry into the predecisional process of the agency.
- ☐ Attorney work-product privilege. (Documents prepared by an attorney in contemplation of litigation)
- ☒ Attorney-client privilege. (Confidential communications between an attorney and his/her client)
- ☐ Exemption 6: The withheld information is exempted from public disclosure because its disclosure would result in a clearly unwarranted invasion of personal privacy.
- ☐ Exemption 7: The withheld information consists of records compiled for law enforcement purposes and is being withheld for the reason(s) indicated.
- ☐ (A) Disclosure could reasonably be expected to interfere with an enforcement proceeding (e.g., it would reveal the scope, direction, and focus of enforcement efforts, and thus could possibly allow recipients to take action to shield potential wrongdoing or a violation of NRC requirements from investigators).
- ☐ (C) Disclosure would constitute an unwarranted invasion of personal privacy.
- ☐ (D) The information consists of names of individuals and other information the disclosure of which could reasonably be expected to reveal identities of confidential sources.
- ☐ (E) Disclosure would reveal techniques and procedures for law enforcement investigations or prosecutions, or guidelines that could reasonably be expected to risk circumvention of the law.
- ☐ (F) Disclosure could reasonably be expected to endanger the life or physical safety of an individual.
- ☐ OTHER (Specify)

PART II.B -- DENYING OFFICIALS

Pursuant to 10 CFR 9.25(g), 9.25(h), and/or 9.65(b) of the U.S. Nuclear Regulatory Commission regulations, it has been determined that the information withheld is exempt from production or disclosure, and that its production or disclosure is contrary to the public interest. The person responsible for the denial are those officials identified below as denying officials and the FOIA/PA Officer for any denials that may be appealed to the Executive Director for Operations (EDO).

DENYING OFFICIAL	TITLE/OFFICE	RECORDS DENIED	APPELLATE OFFICIAL		
			EDO	SECY	IG
Marvin L. Itzkowitz	Associate General Counsel for Hearings, Enforcement and Administration	Appendix -D		✓	
Eric J. Leeds	Director, Office of Nuclear Reactor Regulation	Appendix -E	✓		

Appeal must be made in writing within 30 days of receipt of this response. Appeals should be mailed to the FOIA/Privacy Act Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, for action by the appropriate appellate official(s). You should clearly state on the envelope and letter that it is a "FOIA/PA Appeal."

APPENDIX B
RECORDS ALREADY PUBLICLY AVAILABLE

<u>NO.</u>	<u>DATE</u>	<u>ACCESSION NUMBER</u>	<u>DESCRIPTION/(PAGE COUNT)</u>
1.	10/23/2008	ML083040378	Program for Maintenance of Irradiated Fuel and Preliminary Decommissioning Costs Analysis in accordance with 10 CFR 50.54 (bb) and 10 CFR 50.75(f) (128 pages)
2.	07/28/2008	ML081080352	Non-Proprietary Version: Pilgrim, Indian Point, FitzPatrick, Vermont Yankee, Palisades, Big Rock Point Safety Evaluation Application for Indirect Transfer of Facility Operating Licenses Due to Entergy Corporation Restructuring. (21 pages).

APPENDIX C
RECORDS BEING RELEASED IN THEIR ENTIRETY

No.	DATE	DECSRIPTION (PAGE COUNT)
1.	07/21/08- 10/13/08	U.S. NRC Invoices to Entergy Nuclear Operations, Inc for Indian Point 1 (14 pages)
2.	07/21/08- 10/13/08	U.S. NRC Invoices to Entergy Nuclear Operations, Inc for Indian Point 2 (38 pages)
3.	07/21/08- 10/13/08	U.S. NRC Invoices to Entergy Nuclear Operations, Inc for Indian Point 3 (28 pages)
4.	07/21/08- 10/13/08	U.S. NRC Invoices to Entergy Nuclear Operations, Inc for FitzPatrick (23 pages)
5.	07/21/08- 10/13/08	U.S. NRC Invoices to Entergy Nuclear Operations, Inc for Vermont Yankee (41 pages)
6.	07/21/08- 10/13/08	U.S. NRC Invoices to Entergy Nuclear Operations, Inc for Pilgrim (27 pages)
7.	07/21/08- 10/13/08	U.S. NRC Invoices to Entergy Nuclear Operations, Inc for Palisades Nuclear Power Plant (26 pages)
8.	07/26/08	Email from Ellegood to M. Chawla: Subject: Palisades SFP racks with Attachment: Report on resolution of Outstanding Concerns on Spent Fuel Pit Rack Localized Swelling Palisades Nuclear Plant (16 pages)

APPENDIX C
RECORDS BEING RELEASED IN THEIR ENTIRETY

No.	DATE	DESCRIPTION (PAGE COUNT)
9.	07/16/08	Email from G. Wiggins to M. McKinney, et al; Subject: UNSAT Preliminary Results on Palisades BADGER testing (1 page)
10.	7/16/08	Email from R. Telson to J. Thorp, et al; Subject: ACE for CR-PLP-2007-03105; with Attachment: ACE for CR-PLP-2007-03105 (13 pages)
11.	08/08/08	Email from J. Giessner to R. Telson, et al; Subject: Signed Evaluation for SFP racks, with Attachment: crs4.pdf (6 pages)
12.	09/08/08	Email from T. Wiggins to B. Dotson, et al; Subject: SFP Information (2 pages)

**APPENDIX D
RECORDS BEING WITHHELD IN THEIR ENTIRETY**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	No date	Draft Safety Evaluation of the Office of Nuclear Reactor Regulation Application for Indirect Transfer of Facility Operating Licenses Due to Entergy Corporation Restructuring Pilgrim Nuclear Power Station: Docket No. 50.293, Indian Point Nuclear Generating Unit No. 1; Docket No. 50-003, Indian Point Nuclear Generating Unit No. 2; Docket Nos. 50-247 & 72.51, Indian Point Nuclear Generating Unit No. 3; Docket No. 50-286, James A Fitzpatrick Nuclear Power Plant; Docket Nos. 50-333 & 72-12, Vermont Yankee Nuclear Power Station; Docket Nos. 50-271 & 72-59, Palisades Nuclear Plant; Docket Nos. 50-255 & 72-7, Big Rock Point; Docket Nos. 50-155 & 72-43 (21 pages) EX 5: Predecisional [Portions outside of scope]
2.	No date	Draft Safety Evaluation of the Office of Nuclear Reactor Regulation Application for Indirect Transfer of Facility Operating Licenses Due to Entergy Corporation Restructuring Pilgrim Nuclear Power Station: Docket No. 50.293, Indian Point Nuclear Generating Unit No. 1; Docket No. 50-003, Indian Point Nuclear Generating Unit No. 2; Docket Nos. 50-247 & 72.51, Indian Point Nuclear Generating Unit No. 3; Docket No. 50-286, James A Fitzpatrick Nuclear Power Plant; Docket Nos. 50-333 & 72-12, Vermont Yankee Nuclear Power Station; Docket Nos. 50-271 & 72-59, Palisades Nuclear Plant; Docket Nos. 50-255 & 72-7, Big Rock Point; Docket Nos. 50-155 & 72-43 (19 pages) EX 5: Predecisional/Attorney Work Product/Attorney-Client Privilege [Portions outside of scope]
3.	No date	Draft 5.0 Decommissioning Funding Assurance (1 page) EX: 5 Predecisional/Attorney-Client Privilege
4.	No date	Draft Enclosure 2 - Safety Evaluation of the Office of Nuclear Reactor Regulation Application for Indirect Transfer of Facility Operating Licenses Due to Entergy Corporation Restructuring Pilgrim Nuclear Power Station: Docket No. 50.293, Indian Point Nuclear Generating Unit No. 1; Docket No. 50-003, Indian Point Nuclear Generating Unit No. 2; Docket Nos. 50-247 & 72.51, Indian Point Nuclear Generating Unit No. 3; Docket No. 50-286, James A Fitzpatrick Nuclear Power Plant; Docket Nos. 50-333 & 72-12, Vermont Yankee Nuclear Power Station; Docket Nos. 50-271 & 72-59, Palisades Nuclear Plant; Docket Nos. 50-255 & 72-7, Big Rock Point; Docket Nos. 50-155 & 72-43 (20 pages) EX 5: Predecisional [Portions outside of scope]

**APPENDIX E
RECORDS BEING WITHHELD IN PART**

<u>NO.</u>	<u>DATE</u>	<u>DESCRIPTION/(PAGE COUNT)/EXEMPTIONS</u>
1.	7/28/08	<p>Proprietary Version of Safety Evaluation by the Office of Nuclear Reactor Regulation Application for Indirect Transfer of Facility Operating Licenses Due to Entergy Corporation Restructuring:</p> <ul style="list-style-type: none">-Pilgrim Nuclear Power Station; Docket No. 50-293-Indian Point Nuclear Generating Unit No.1; Docket No. 50-003,-Indian Point Nuclear Generating Unit No. 2; Docket Nos. 50-247 & 72-51-Indian Point Nuclear Generating Unit No. 3; Docket No. 50-286-James A. Fitzpatrick Nuclear Power Plant; Docket Nos. 50-333 & 72-12-Vermont Yankee Nuclear Power Station; Docket Nos. 50-271 & 72-59-Palisades Nuclear Plant; Docket Nos. 50-255 & 72-7-Big Rock Point; Docket Nos. 50-155 & 72-43 <p>(21 pages)* / EX (b)(4) Confidential Business Proprietary Information</p>

***The Non-Proprietary version of this record is publicly available in the NRC Public Document Room and in the electronic reading room. The record is identified on enclosed Appendix B-2.**